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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

JACOB McGRATH, on behalf of himself and
 all others similarly situated,

Plaintiff,

vs.

DOORDASH, INC.,

Defendant.

Case No: 3:19-cv-05279

**PLAINTIFF'S ORIGINAL COMPLAINT
 FOR VIOLATIONS OF FAIR LABOR
 STANDARDS ACT**

FLSA COLLECTIVE ACTION

DEMAND FOR JURY TRIAL

Plaintiff Jacob McGrath ("McGrath" or "Plaintiff"), on behalf of himself and all others similarly situated, files this Original Complaint against Defendant DoorDash, Inc. and shows in support as follows:

I. INTRODUCTION AND NATURE OF ACTION

1. Defendant, DoorDash, Inc. (referred to hereinafter as "Defendant" and/or "DOORDASH"), provides takeout food delivery via a phone application and website throughout the country. To do so, it employs delivery drivers (a/k/a "Dashers"). Defendant misclassifies Plaintiff and its other Dashers as "independent contractors" rather than "employees" and fails to pay them for all hours worked.

1 9. At all times relevant to this lawsuit, Defendant has been an “enterprise engaged in
2 commerce” as defined by the FLSA.

3 10. At all times relevant to this lawsuit, Defendant employed, and continues to
4 employ, two or more employees.

5 11. At all times relevant to this lawsuit, Defendant employed two or more employees
6 who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials
7 that have been moved in or produced for commerce by any person.

8 12. On information and belief, at all times relevant to this lawsuit, Defendant has had
9 gross operating revenues or business volume in excess of \$500,000.

10 **III. JURISDICTION AND VENUE**

11 13. This Court has federal question jurisdiction over all claims pursuant to 28 U.S.C.
12 § 1331 and the FLSA at 29 U.S.C. § 216(b).

13 14. The United States District Court for the Northern District of California has
14 personal jurisdiction over Defendant because Defendant does business in California and in this
15 District, and because many of the acts complained of and giving rise to the claims alleged
16 occurred in California and in this District.

17 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a
18 substantial part of the events giving rise to all claims occurred in this District.

19 16. **Intradistrict Assignment:** This lawsuit should be assigned to the San Francisco
20 Division of this Court because a substantial part of the events or omissions which give rise to this
21 lawsuit occurred in Sonoma County.

22 **IV. FACTUAL BACKGROUND**

23 17. DoorDash is a food delivery service which provides home and office food
24 delivery to its customers.

25 18. Plaintiff was hired to work as a delivery driver/Dasher for Defendant.

26 19. DoorDash does not pay Plaintiff or its other Dashers an hourly wage or a salary;
27 rather, Plaintiff receives the “delivery fee” that is paid by DoorDash’s customers, as well as any
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1 gratuity that the customer pays to the Dasher. DoorDash, not Plaintiff or the other Dashers,
2 determines the “delivery fee.”

3 20. While DoorDash classifies Plaintiff as an “independent contractor,” Plaintiff is
4 truly an “employee” pursuant to the FLSA’s economic realities test.

5 21. For instance, Plaintiff does not determine the amount he will charge DoorDash for
6 his services; rather, DoorDash decides how much of a “delivery fee” its customers will pay and
7 simply passes that charge on to the Plaintiff as his sole compensation.

8 22. DoorDash provides Plaintiff and its other Dashers with the customers for whom
9 the delivery services are to be performed.

10 23. DoorDash requires Plaintiff and its other Dashers to comply with certain rules,
11 regulations, policies and procedures in order to work for them. A Dasher who fails to comply
12 with said policies is subject to reprimand and/or termination.

13 24. Plaintiff and the other Dashers all perform delivery services within DoorDash’s
14 usual course of business as a food delivery service. Without delivery drivers/Dashers, DoorDash
15 would not exist.

16 25. DoorDash unilaterally sets the pay scheme and rate of pay for Plaintiff and its
17 other Dashers. This rate of pay is not negotiated by and among DoorDash and its Dashers.

18 26. DoorDash has a single pay practice and/or policy that applies to Plaintiff and all
19 of its other Dashers.

20 27. Pursuant to DoorDash’s policy, it does not reimburse Plaintiff or any of its
21 Dashers for the cost of owning/leasing a vehicle, nor the cost to fuel or maintain it.

22 28. Moreover, DoorDash: (i) had the power to discipline and/or terminate Plaintiff
23 and the Class Members, (ii) regularly supervised and controlled work conditions of employment
24 for Plaintiff and Class Members, (iii) determined the rate and method of payment of wages, (iv)
25 paid Plaintiff and Class Member wages and made deductions to his wages, and (v) maintained
26 employment records of Plaintiff and Class Members.

1 29. Plaintiff was not a member of management. Neither he nor any other Class
2 Member had authority to (nor did they): manage an enterprise, hire or fire other employees, set
3 the pay rates of other employees, create policies or procedures to govern Defendant's employees,
4 handle employee grievances, determine the type of equipment or materials that Defendant could
5 use in their operations, plan and/or set Defendant's budget, enter into contracts on behalf of
6 Defendant, or otherwise have operational control over Defendant's business operations and
7 practices. Moreover, Plaintiff and the Dasher Class Members did not perform office or non-
8 manual work directly related to the management or general business operations of Defendant or
9 their customers, nor did they exercise discretion and independent judgment with respect to
10 matters of significance in the conduct of Defendant's businesses.

11 30. Plaintiff and the Dasher Class Members were at all times "non-exempt"
12 employees and eligible to receive the minimum wage pay pursuant to the FLSA.

13 31. Moreover, DoorDash fails to reimburse Plaintiff and its other Dashers for the
14 normal and customary business expenses incurred on DoorDash's behalf in connection with the
15 delivery services they provide. These expenses include, but are not limited to, (i) Plaintiff's use
16 of a personal vehicle (i.e. gasoline and maintenance), (ii) the cost of liability insurance, (iii)
17 damage claims, (iv) parking and toll road charges incurred while picking up/dropping off
18 deliveries; (v) the cost of a cell phone, and all other tools/equipment in order to do the work
19 required. By failing to reimburse Plaintiff for these expenses, Plaintiff has often earned less than
20 the statutory minimum and overtime wage required by the FLSA during many workweeks.

21 32. Finally, DoorDash does not provide proper itemized wage statements that explain
22 the piece rate basis on which Dashers are paid and does not break out the amount of drivers'
23 wages and tip, among other reasons.

24 **V. FLSA CLAIMS FOR MINIMUM WAGE**

25 33. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in
26 this section.

1 **A. FLSA Coverage**

2 34. All conditions precedent to this suit, if any, have been fulfilled.

3 35. At all times relevant to this lawsuit, Defendant was an eligible and covered
4 employer under the FLSA pursuant to 29 U.S.C. § 203(d).

5 36. At all times relevant to this lawsuit, Defendant has been an enterprise engaged in
6 commerce under the FLSA pursuant to 29 U.S.C. § 203(s)(1)(A).

7 37. At all times relevant to this lawsuit, Defendant has employed, and continues to
8 employ, employees including Plaintiff and the putative Collective Action Members who engaged
9 in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

10 38. At all relevant times, Defendant has had gross operating revenues or business
11 volume in excess of \$500,000.

12 **B. FLSA Allegations**

13 39. At all relevant times, Plaintiff and the Putative Collective Action Members were
14 employees of Defendant pursuant to the FLSA.

15 40. The FLSA generally requires that employers pay their employees the minimum
16 wage for all hours worked. 29 U.S.C. § 206(a)(1).

17 41. Defendant misclassifies Plaintiff and its other delivery drivers as “independent
18 contractors” rather than “employees” and fails to pay them for all hours worked. In addition,
19 Defendant has required Plaintiff and its other Dashers to pay business expenses (including
20 expenses incurred to own/lease a vehicle, maintain it, and fuel it) causing Plaintiff to be paid less
21 than the statutory minimum wage required by Sections 206 of the FLSA. As a result, Defendant
22 violates the minimum wage provisions of the FLSA.

23 **C. Collective Action Allegations**

24 42. Plaintiff brings this suit as a collective action pursuant to 29 U.S.C. § 216(b) on
25 behalf of himself and all other persons employed by Defendant as a delivery service driver (*i.e.*
26 Dasher) within three (3) years from the filing of this suit who, like Plaintiff, (i) have been
27 misclassified as an “independent contractor;” and (ii) who have not been compensated at least
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1 the full statutory minimum wage for all hours worked up to 40 each week. Those who file a
2 written consent will be a party to this action pursuant to 29 U.S.C. § 216(b) (the “FLSA Class”).

3 43. Plaintiff has actual knowledge that putative Collective Action Members have been
4 misclassified and denied their minimum wage. Plaintiff worked with other Dashers employed by
5 Defendant. As such, he has personal knowledge of the pay violations. Furthermore, other
6 Dashers have shared with him that they experienced similar pay violations as those described in
7 this complaint. In fact, other Dashers who worked for Defendant have opted into this lawsuit as
8 opt-in Plaintiffs.

9 44. Other Dashers similarly situated to Plaintiff work or have worked for Defendant
10 and did not receive their minimum wage.

11 45. Other Dashers similarly situated to Plaintiff work or have worked for Defendant
12 and were misclassified as independent contractors.

13 46. The putative Collective Action Members are similarly situated to Plaintiff in all
14 relevant respects, having performed the same work duties as Plaintiff and being similarly situated
15 with regard to Defendant’s pay practices – specifically, misclassifying Dashers as independent
16 contractors and denying them their minimum wage pay.

17 47. The putative Collective Action Members are similar to Plaintiff in terms of job
18 duties, pay structure, and the denial of all due and owing wages.

19 48. Defendant’s failure to pay the minimum wage to Dashers it misclassifies as
20 independent contractors results from generally applicable policies or practices, and does not
21 depend on the personal circumstances of the putative Collective Action Members.

22 49. The experiences of Plaintiff with respect to his misclassification and pay, or lack
23 thereof, is typical of the experiences of the putative Collective Action Members.

24 50. The specific job titles or precise job responsibilities of each putative Collective
25 Action Member does not prevent collective treatment.

All current and former Dashers who worked for Defendant nationwide from any time starting three years before a collective action may be conditionally certified in the case until the date the case resolves.

1. Claim for Relief – Violation of the FLSA, Failure to Pay the Minimum Wage to Plaintiff and Putative Collective Action Members.

54. The foregoing conduct, as alleged, violated the FLSA.

56. Defendant was, at all times relevant to this claim for relief, the employer of Plaintiff and the putative Collective Action. *See* 29 U.S.C. § 203(d).

58. Defendant failed to pay Plaintiff and the putative Collective Action their minimum wages for all hours worked in a given workweek.

60. Plaintiff seeks all damages to which he and the putative Collective Action are entitled under the FLSA, including their back wages, liquidated damages, attorneys' fees and

costs, post-judgment interest, and specifically plead recovery for the three (3) year period preceding the filing of this lawsuit through its resolution.

VII. JURY DEMAND

61. Plaintiff hereby demands a jury trial on all causes of action and claims for relief with respect to which he and the putative Collective Members have a right to jury trial.

VIII. DAMAGES AND PRAYER

62. Plaintiff asks that the Court issue summons for Defendant to appear and answer, and that Plaintiff and the Collective Action Members be awarded a judgment against Defendant or order(s) from the Court for the following:

- a. An order conditionally certifying this case as an FLSA collective action and requiring notice to be issued to all putative Collective Action Members;
- b. An award of damages including all unpaid minimum wages for all hours worked up to forty in a workweek, and all liquidated damages, and restitution to be paid by Defendant;
- c. Costs of action incurred herein, including expert fees;
- d. Attorneys' fees and costs, including fees pursuant to 29 U.S.C. § 216;
- e. Post-judgment interest, as provided by law;
- f. Such other relief as the Court may deem just and proper.

DATED: August 23, 2019

Respectfully submitted,

By: s/Melinda Arbuckle
Melinda Arbuckle

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